

FILED  
Clerk  
District Court

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APR - 7 2006  
 For The Northern Mariana Islands  
 By \_\_\_\_\_  
 (Deputy Clerk)

5 Attorneys for Defendant Todd Keith Johnson

6 IN THE UNITED STATES DISTRICT COURT  
 7 FOR THE NORTHERN MARIANA ISLANDS

8 ALAN STUART MARKOFF, D.D.S. dba ) CIVIL ACTION NO. CV-05-0035  
 9 TOOTHWORKS and OPEN CHOICE, )  
 10 Plaintiff, ) DECLARATION OF TODD K. JOHNSON  
 11 vs. ) IN FURTHER SUPPORT OF  
 12 Defendant. ) MEMORANDUM OF LAW OF  
 13 ) A MOTION TO STAY  
 14 ) Date : Munson, Chief Judge  
 15 ) Time : April 13, 2006  
 16 ) Judge : 9:00 a.m.  
 17 )

18 I, Todd Keith Johnson, declare under the penalty of perjury that following is true and  
 19 based on my personal knowledge.

20 1. Currently, I believe the key witnesses, besides myself and Dr. Markoff, to this  
 21 case and the Texas County case are:

22 a. **Million Dollar Dental Practices** ("MDP") located in Oregon which  
 23 performed an appraisal of Toothworks and Open Choice and negotiated  
 24 the sale of these businesses to Dr. Markoff. Even if Doug Seibert is ill,  
 25 his son Jim and his daughter Laura have knowledge of this matter and  
 MDP should have all the relevant documents related to the appraisal and  
 correspondence during the negotiation of the sale of Toothworks. Also  
 David Perry who worked for or with MDP appeared to me to be the

actual "numbers cruncher." And so he may be one of the most important witnesses to this matter.

- b. **John Ronan**, Minnesota, a former friend of Dr. Markoff who ran my business for about a year during the negotiations for the sale of my businesses.
- c. **Mr. Lerner**, Houston Texas, who is I believe Dr. Markoff's accountant who reviewed all of Toothworks' and Open Choice's documents during the negotiations for the sale of Toothworks.

10 2. I believe the most important documents are the following:

- a. Toothworks' and Open Choice's financial records which are located on Saipan but copies were sent to Dr. Markoff in Texas and may still be with Dr. Markoff's accountant in Texas. I also have copies of most of the documents as well with me in Oklahoma.
- b. MDP's records which are located in Oregon.
- c. Correspondence between myself, Dr. Markoff and our lawyers, located either in Texas or with me and my lawyer in Oklahoma.

## BACKGROUND

## The Hiring Of MDP

3. Sometime in 2003, I decided to sell my dental practice here in the NMI, in part because my parents' health was and still is declining and they needed me to run the family business here in Oklahoma.

4. I hired MDP located in Oregon which on information and belief is principally run by Doug Seibert and his son Jim and daughter Laura Peters. But as stated earlier, I believe

1       Dave Perry was the person who actually "worked the numbers" to come up with a sale price. I  
2       believe Doug was more the "pitch-man" for MDP. I have no knowledge if Doug is truly ill or  
3       not. But I believe Mr. Perry is probably a more important witness than Doug for this suit.  
4

5       5.       MDP put me into contract with Alan Markoff who was living in Texas while I  
6       was in Oklahoma.

7

8       6.       MDP together with Dr. Markoff suggested I hire John Ronan to run my practice  
9       so that I could return to Oklahoma, which I did.

10

11 **MDP Thoroughly Investigated Toothworks**

12       7.       In order to put a value on the sale of the practice, MDP did a thorough  
13       investigation of my practice here, including all of Toothworks' and Open Choice's documents.  
14       Jim Seibert actually flew to Saipan together with Dr. Markoff as part of this appraisal. At some  
15       point Doug Seibert turned the sale of Toothworks over to his daughter Laura Peters.

16

17       8.       Through MDP, I continued to negotiate a purchase price with Dr. Markoff.

18

19       9.       In fact, for a while Jim Seibert and Dr. Markoff together proposed to buy  
20       Toothworks.

21

22 **-- As Did Plaintiff**

23       10.       At Dr. Markoff's request, I had my bookkeeper Angie Mamaril send to him in  
24       Texas all the financial records he requested.

1 11. I know Dr. Markoff used an accountant in Houston to review all of Toothwork's  
2 and Open Choice's financial documents. I believe his name is Mr. Lerner.  
3

4 12. Dr. Markoff also hired a lawyer in Texas and I a lawyer in Oklahoma to assist in  
5 the negotiations.  
6

7 13. These negotiations took about a year.  
8

9 **Dr. Ronan Is An Important Witness**

10 14. During this time, John Ronan ran my practice and had access to all of the  
11 financial records. I understand Dr. Markoff promised to make Dr. Ronan a partial equity owner  
12 in the practice if the sale was completed. From my conversations with Dr. Ronan I know he  
13 was keeping a close watch on the practices' finances as he wanted to be a part owner. So I  
14 believe he is a key witness. Once he bought the business, Dr. Markoff fired Dr. Ronan.  
15

16 15. I understand Dr. Ronan lives now in Minnesota, I will find out his address by  
17 tracking his dental license and a friend of mine may know where he is. But I also believe Dr.  
18 Markoff knows where he is.  
19

20 **Wallis State Bank Is Also An Important Witness**

21 16. Dr. Markoff I believe had to obtain a loan in order to pay the purchase price.  
22

23 17. I believe Dr. Markoff tried to obtain loans from banks on Saipan but was  
24 unsuccessful.  
25

18. I believe he did obtain a loan from Wallis State Bank located in Texas. I have correspondence from Beverly Fortner of that bank. From these letters, I understand the Bank reviewed many if not all of Toothworks' relevant financial records. For instance, in September 2004, several months before Dr. Markoff signed the purchase agreement, Ms. Fortner wrote:

The year to date profitability figure I have on the practices are significantly lower than the results in Dr. Johnson's tax returns. Do you [Dr. Markoff] know of any reason for this? (See attached email).

From that same letter, I gather she also reviewed MDP's appraisal report as she requested another copy as "several pages" were "blurred".

## Progressive Management Consultants Is Also An Important Witness

19. Once we were close to closing the deal, Dr. Markoff insisted we hire Bruce Lowry of Progressive Management Consultants who then drafted the final purchase agreement with input from our lawyers but also Dr. Markoff's account.

20. Mr. Lowry is a witness as he suggested the deal be re-structured at least in part so that Plaintiff could get a loan by taking some of the purchase price and making it a "consulting agreement".

## **Plaintiff's Initial Disclosures Are Not Accurate**

21. I have reviewed Plaintiff's Initial Disclosures. I believe it is not a fair statement of witnesses as it fails to include MDP, Progressive Management Consultants and Wallis State Bank. For instance, Dr. Markoff in the Texas County case admits MDP and Progressive Management Consultants are witnesses but fails to disclose them to this Court. *See* attached Affidavit. Because each is on the Mainland?

1       22. As to the witnesses listed in that document, I do not know why Bank of Hawaii,  
2 First Hawaiian Bank or Bank of Guam are listed as witnesses (other than they are located on  
3 Saipan). Perhaps Dr. Markoff tried to obtain loans there. But to my knowledge none of those  
4 banks had anything to do with the negotiation or sale of Toothworks or Open Choice.  
5 Significantly, Plaintiff failed however to list Wallis State Bank. Perhaps because it is in Texas?

6

7       23. As to Scott Magliari, neither he or his firm were ever Toothworks' accountants  
8 while I was there. I do not know why he is listed as a witness.

9

10      24. As to Carol Galanza, she was my chair-side assistant and to my knowledge had  
11 nothing to do with the operation of Toothworks, its financials or the negotiation or sale of  
12 Toothworks. Is she listed because she lives on Saipan?

13

14      25. Delgadina Sablan was the office manager of Toothworks but again her  
15 knowledge of the financial operations or the sale of Toothworks would be very limited. Again  
16 I do not believe she will be a significant witness.

17

18      26. Flor Urena was a bookkeeper for Toothworks but only after I went to Oklahoma.  
19 So she does have some knowledge about Toothworks' financial records but only for a very  
20 limited time period.

21

22      27. Angelina Mamaril was Toothworks' head bookkeeper and she does have relevant  
23 knowledge for this matter and of the staff of Toothworks, I believe she is the only real witness.  
24 But I do not know where she currently works or resides or even if she is on Saipan still - - Dr.  
25 Markoff fired her.

## **It Would Very Difficult For My Family And If I have To Litigate In Saipan**

28. It would be a tremendous hardship on me and my family if I had to litigate this case in Saipan. Texas is already burdensome enough. I sued there as my lawyer in Oklahoma said I had to since Dr. Markoff was a resident in Texas. My parents are not well and I have to take care of them and I now run the family business - - the very reasons I left my profitable practice on Saipan to start with.

29. I have no family or residence in Saipan. I do no business there anymore and I have not been back there since I left in 2004.

Dated this April, 2006.

Todd Keith Johnson

County of \_\_\_\_\_ )  
State of \_\_\_\_\_ ) s.s.  
Oklahoma ..... )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2006, before me, a Notary Public in and for Oklahoma personally appeared Todd Keith Johnson known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his own free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hands and affixed my official seal the day and  
year last written above.

## Notary Public